Supreme Court, U.S.
FILED
DEC 18 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-2035

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

ADAMS FRUIT CO.,
Petitioner,

vs.

RAMSFORD BARRETT, *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF AMICI CURIAE FOR TEXAS, CALIFORNIA, AND MASSACHUSETTS IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*

Each of the *amici curiae* states -- the States of California and Texas and the Commonwealth of Massachusetts -- has a provision in its state workers' compensation statute making workers' recovery for personal injuries under the state workers' insurance system the exclusive mechanism for personal injury compensation; each *amicus's* workers' compensation system covers migrant farmworkers. None of the exclusivity provisions in the *amici's* workers' compensation statutes specifies federal causes of action as excluded actions.

The exclusivity section of Texas's current workers' compensation statute provides:

> [Covered] employees . . . shall have no right of action against their employer . . . for damages for personal injuries . . . but . . . shall look for compensation solely to the association[.]

TEX.REV.CIV.STAT.ANN. art. 8306, § 3 (Vernon Supp. 1989).[1] Migrant farmworkers have been covered by the act since 1985. *Id.*, § 2b.[2]

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1 A comprehensive revision of Texas's workers' compensation statute was signed into law on December 13, 1989. Tex. S.B. 1, 71st Leg., 2d Called Sess. (Dec. 11, 1989). Most of its provisions will be effective on January 1, 1991, including the exclusivity provision, § 3.07, and the migrant farmworker coverage provision, § 4.01.

2 *See also* CAL. LAB. CODE § 3602 (West 1989; MASS. GEN. L. ch. 152, §§ 23, 24 (1988), GEN. L. ch. 152, §§ 1(4), 67 (1988).

The *amici* states also have an interest in this case because of the agricultural workers present within their borders. Their presence in Texas is especially large. A recently completed study estimated the total farmworker population in Texas in 1987 to be 513,731. Approximately 56%, or 289,436, of these farmworkers are migrant workers.[3]

Broadly stated, the interest of each *amicus* state is to prevent its principal statutory mechanism for the recompense of injured migrant workers from being transmuted into a contraption destroying federal protection for those same workers.

SUMMARY OF ARGUMENT

This case does not pose a federal preemption problem for the Court to resolve; it poses a statutory construction problem that, when solved, shows that Congress supplemented state workers' compensation protections for migrant farmworkers with a federal right of recovery for personal injuries. In creating a federal right, Congress left undisturbed the state law provisions which make workers' compensation the exclusive method of recovery for personal injury from an employer. It left those provisions undisturbed from two perspectives important to the states.

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3 L. Plascencia, M. Ceballos, & R. Glover, TEXAS FARMWORKER ENUMERATION PROJECT 67 & 79 (Center for the Study of Human Resources, L.B.J. School of Public Affairs, University of Texas at Austin, July 1989). The estimates are based on the total number of individuals in households.

First, it did not preempt them. Second, and more importantly for this case, it did not incorporate them. It simply left them alone and placed aside them, so to speak, a new federal right and remedy.

The petitioners and their supporting *amici* purvey an analysis which creates an insoluble dilemma for themselves by asking that a basic statutory construction principle be applied inconsistently. They argue no preemption because Congress did not express itself clearly enough to preempt state law. They also argue incorporation because Congress clearly expressed its intentions in this regard. The statute, however, reveals no clear intentions on either point, preemption or incorporation. If clearly expressed intention is the test for both points, as the petitioners seem to concede, then their case must fail.

The Department of Labor's effort to fill the statutory gap through a regulatory provision fails because our federal structure does not permit an administrative agency to perform the alchemical function of transforming the silence of a state legislature with regard to federal rights into a proclamation reducing federal rights. However limited it might now be, the Tenth Amendment retains sufficient life to prevent a federal bureaucratic action from making a state legislative action preempt federal legislative action.

ARGUMENT

I. The Migrant and Seasonal Agricultural Worker Protection Act does not limit the right to recovery it provides migrant farmworkers by imposing a state-law based limitation devised without regard to the federally created right.

State legislatures typically do not craft their workers' compensation statutes, exclusivity provisions and all, with an eye toward their effects on federal rights and remedies. Instead, as would be expected in a federal system such as ours, federal and state rights to recovery often exist side-by-side, undisturbed by state legislative efforts to abolish the state right because the federal right exists. *See, e.g., Landry v. Carlson Mooring Service*, 643 F.2d 1080 (5th Cir.), *cert. denied*, 454 U.S. 1123 (1981) (settlement of Texas workers compensation claim is no bar to claim under federal Longshoremen's and Harbor Workers' Compensation Act).

This phenomenon of federalism has not gone unnoticed in the Court. In a workers' compensation case, a realistic appraisal of federalism's effects led to the uncontested observation that "a state legislature seldom focuses on the extraterritorial effect of its enactments[.]" *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 274 (1980) (plurality opinion) (footnote omitted); *see also Northbrook National Insurance Co. v. Brewer*, 110 S.Ct. 297, 301

(1989) (Stevens, J., dissenting) ("[w]orkers' compensation is generally a subject of local interest and control").

Against this state law backdrop, Congress enacted the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801-1872 ("AWPA"). A centerpiece of the AWPA is the creation in Section 1854 of a federal private right of action for damages and equitable relief for injured migrant farmworkers. Subpart (b)(2) of the section authorizes judicial consideration of pre-litigation efforts at dispute resolution in assessing damages; however, neither that subpart nor any other provision in the section authorizes a defense to the federal damage action based on the availability of a state workers' compensation exclusive remedy for personal injuries.

The only AWPA reference to state workers' compensation law is in Section 1841(c)(1), where it waives mandatory insurance coverage for employers who transport workers under circumstances where there is state workers' compensation coverage; however, the provision says nothing whatever about creating a state workers' compensation defense to a Section 1854 damage action. It merely establishes the rules for mandatory employer financial protection from Section 1854-based damage actions. State workers' compensation statutes place a ceiling on necessary insurance coverage, not on damages recovery.

Section 1871 makes the AWPA as a "supplement" to state law. Thus, except where explicitly stated, the Act neither supplants nor incorporates state laws such as workers' compensation systems. It adds to their protections and otherwise leaves them untouched. With this clear Congressional directive, and given the limited reach of Section 1841(c)'s language, the federal private right of action created in Section 1854 and the state right of action created in workers' compensation statutes, as limited by their exclusivity provisions, are independent of each other. They coexist, and neither detracts from the other. Any other reading of the AWPA would be at odds with its language, while imparting to state legislators powers which they never contemplated.

II. The constraints of federalism deprive the U.S. Department of Labor of the power to unilaterally convert state legislative silence into a proclamation depriving migrant farmworkers of federal statutory rights and remedies.

Without legislative authorization, the Department of Labor ("DOL") is powerless to restrict a federally created right through rulemaking. The respondents thoroughly address these fundamental administrative law and separation of law principles in Part II of their brief, and *amici* do not revisit the matter here.

Of more fundamental concern to the *amici* is the constitutional damage to federalism

threatened by DOL's regulatory action in creating 29 C.F.R. § 500.122(b).[4] In the face of the AWPA's contrary directives discussed in Part I of this brief, DOL's regulatory action converts state statutory worker protection into preemption of a federal right. Especially in light of the well-recognized inward-directed nature of state statutes such as workers' compensation laws, this conversion clashes with basic federalism principles as *amici* understand them. State legislators simply do not legislate in contemplation of limiting federal rights. The dictates of federalism in the Constitution deny state lawmakers that luxury and, in fact, establish a flow in precisely the opposite direction.

Notwithstanding the broadly stated holdings of *South Carolina v. Regan*, 108 S.Ct. 1355 (1988), and its progenitor, *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), states retain at least a kernel of constitutional protection from federal compulsion under the Tenth Amendment and the federalism principles embodied in it. *Regan* recognized that *Garcia* left open the possibility that "extraordinary defects in the national political process" might limit federal regulation of state activities through the Tenth Amendment. 108 S.Ct. at 1360-61.

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[4] Section 500.122(b) provides: "Where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker by the employer, the workers' compensation benefits are the exclusive remedy for loss under this Act in the case of bodily injury or death."

That limit is reached when, without benefit of Congressional direction, the federal bureaucracy extends its regulatory power to snatch from the state its own laws and convert them to a federal use fundamentally at odds with the principles animating the state enactment. *Garcia* forcefully explained to the states that they must find their protection from Congressional intrusion in the national political process and the Constitutional structure under which that process is conducted; however, *Garcia's* attention was devoted to the Congress and the Presidency textually contemplated in the Constitution, not to the vast federal administrative state that has grown up around those institutions, an administrative state which the Founders and citizens did not contemplate when the Tenth Amendment was proposed and adopted.

A federal regulatory action so disconnected from Congressional directives cannot expropriate state law and convert it to a perverse kind of federal use without running afoul of the Tenth Amendment. The states are not so much at the mercy of the federal bureaucracy.

CONCLUSION

The *amici curiae* urge affirmance of the decision of the Eleventh Circuit for the foregoing reasons.

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